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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

ACCLAIM LIGHTING, INC., a Georgia
corporation;

Plaintiffs,

vs.

ROBERT BRUCK, an individual residing in
La Crescenta, California; and BRUCK
CONCEPTS, D/B/A INNOVATIONS IN
LIGHTING, a California corporation,

Defendants.

Case No.: 2:17-cv-00147

**PLAINTIFF'S MOTION TO COMPEL
COMPLETE RESPONSES TO
PLAINTIFF'S FIRST SET OF
INTERROGATORIES AND FIRST SET
OF REQUESTS FOR PRODUCTION OF
DOCUMENTS**

Pursuant to Fed. R. Civ. P. 37, Plaintiff Acclaim Lighting Corporation ("Acclaim" or "Plaintiff") hereby moves this Court for an Order compelling Defendants Robert Bruck and Bruck Concepts, d/b/a Innovations In Lighting (collectively "Defendants") to provide complete responses to Plaintiff's First Set of Requests for Production Nos. 2, 3, 4, 5, 7, 10, 11, 13, 14, 15, 16, and 18 (the "Requests for Production"). *See* Declaration of Franklin M. Smith in Support of

1 Plaintiff's Motion to Compel ("Smith Decl."; **Exhibit 1**), at **Exhibit A**. In light of Defendants'
 2 failure to adequately respond to Plaintiff's discovery requests, Plaintiff further moves for an
 3 Order modifying the Scheduling Order (ECF No. 24) (the "Scheduling Order") to allow Plaintiff
 4 additional time to retain an expert witness following Defendants' supplemental document
 5 production.

6 **FRCP 37(A)(1) CERTIFICATION OF GOOD-FAITH ATTEMPT TO CONFER AND**
 7 **CONFERENCE WITH DEFENDANTS**

8 The undersigned met and conferred with Defendants' counsel on multiple occasions in a
 9 good faith effort to obtain complete responses to Plaintiff's Requests for Production without
 10 court intervention. Most recently, the undersigned conducted a telephonic meet and confer on
 11 January 22, 2018, whereby Plaintiff's counsel outlined Defendants' various discovery
 12 deficiencies and Defendants' counsel indicated that he would confer with his clients to determine
 13 whether they would provide additional responsive documents. Smith Decl. at ¶ 11. While the
 14 parties were able to significantly narrow the number of disputed discovery requests and
 15 responses, on January 24, 2018, Defendants' counsel confirmed that Defendants were
 16 withholding documents responsive to Plaintiffs' Requests for Production Nos. 2, 3, 4, 5, 7, 10,
 17 11, 13, 14, 15, 16, and 18 and would oppose any motion to compel. Smith Decl. at ¶
 18 12. Defendants' counsel also confirmed during the parties January 22, 2018 call that Defendants
 19 would oppose any attempt to modify the present Scheduling Order. Smith Decl. at ¶ 11.

20 **MEMORANDUM OF POINTS AND AUTHORITIES**

21 **I. INTRODUCTION**

22 Over three months ago, Plaintiff served its First Set of Requests for Production of
 23 Documents to Plaintiff. These requests were narrowly tailored to Plaintiff's allegations that
 24 Defendants misappropriated trade secret information, stole Plaintiff's designs and data, and used
 25 Plaintiff's information to unfairly compete against Plaintiff; including, without limitation, by
 26 manufacturing, importing, marketing and selling Plaintiff's designs to Plaintiff's customers.
 27 Accordingly, Plaintiff sought evidence of Defendants' manufacturing, importation and sale of
 28

1 Defendants' products that are identical or nearly-identical to Plaintiff's designs. Additionally,
2 Plaintiff sought evidence regarding Defendants' interactions with key third parties responsible
3 for same. Defendants, however, refuse to provide complete responses despite Plaintiff's repeated
4 requests for supplementation; instead, strategically timing their limited responses to hamper
5 Plaintiff's ability to gather evidence prior to the close of discovery. As a consequence, Plaintiff
6 was forced to prepare for and conduct Defendants' depositions without the benefit of reviewing
7 Defendants' full set responsive documents which are central to Plaintiff's claims. Moreover,
8 Defendants have prejudiced Plaintiff's ability to retain an expert witness because, at the time set
9 for expert disclosures, Plaintiff had yet to receive substantive discovery from Defendants for its
10 expert to review.

11 Accordingly, for the reasons set forth below, Defendants should be compelled to provide
12 supplementary responses to Plaintiff's Requests for Production and the Scheduling Order should
13 be modified to allow additional time to complete discovery and for Plaintiff to retain an expert
14 witness.

15 **II. FACTUAL BACKGROUND**

16 On October 18, 2017, Plaintiff served Defendants with Plaintiff's First Set of
17 Interrogatories and Requests for Production of Documents which were primarily directed toward
18 assessing harm caused by Defendants' alleged misappropriation of Plaintiff's trade secrets and
19 the concomitant use and disclosure to unfairly compete against Plaintiff. Primarily, Defendants
20 sought documents and information regarding the importation and sale of certain specific products
21 that are offered for sale by Defendants and are identical or nearly-identical to designs owned by
22 Plaintiff. Further, Plaintiff sought information regarding specific manufacturers, importers and
23 customers, all in an attempt to assess the full extent to which Defendants' tainted products have
24 entered the marketplace.

25 On September 18, 2017, Defendants provided their Responses and Objections to
26 Plaintiff's discovery requests (the "Responses"). *See* Smith Decl. at **Exhibit B**. In the Responses,
27 Defendants failed to produce a single document; instead demanding that the parties enter a
28

1 protective order prior to any document exchange. Furthermore, the Responses repeatedly
2 objected to Plaintiff's definition of Accused Products as vague and ambiguous and overly broad
3 because it included product numbers that were not specifically identified in the Complaint. By
4 Defendants' own admission they have withheld responsive documents based on these objections.

5 On October 30, 2017 the Court entered the Stipulated Protective Order (ECF No. 28),
6 after which, Defendants agreed to produce what they represented to be a complete set of
7 responsive invoices in order to facilitate early settlement negotiations. Upon further review and
8 investigation, however, Plaintiff determined that Defendants produced a mere fraction of their
9 total responsive invoices despite Plaintiff's targeted request for sales information regarding
10 twenty-five (25) specific product numbers. After discovering same, Plaintiff sought Defendants'
11 stipulation to amend the Scheduling Order so that the parties could continue settlement
12 negotiations and have adequate time to exchange responsive documents in advance of party
13 depositions. Defendants, however, refused and it was not until December 22, 2017 – the Friday
14 before Christmas – that Plaintiff received Defendants document production. Additionally,
15 contrary to the express terms of the Stipulated Protective Order (ECF No. 27), Defendants
16 designated each and every document as "Highly Confidential Information Outside Attorneys'
17 Eyes Only" despite the fact that many documents were available to the public.

18 Shortly thereafter, the parties conducted a meet and confer, after which Defendants'
19 counsel represented that Defendants might supplement their responses in order to avoid the
20 Court's intervention. After the New Year and only days before party depositions, Defendants'
21 counsel confirmed that Defendants would not produce any additional responsive documents.

22 Accordingly, Plaintiff now moves to compel Defendants' complete production of
23 documents responsive to the Requests for Production and to amend the current Scheduling
24 Order.

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III. ARGUMENT

A. Legal Standard

The Federal Rules of Civil Procedure give parties the right to discover “any non-privileged information that is relevant to any party’s claim or defense,” including any information that “appears reasonably calculated to lead to the discovery of admissible evidence.” Fed. R. Civ. P. 26(b)(1). Courts have the power to order discovery on matters “relevant to the subject matter involved in the action.” *Id.*; *See also Partner Weekly, LLC v. Viable Marketing Corp.*, No. 2:09-cv-2120-PMP-VCF, 2014 WL 1577486, at *2 (D. Nev. Apr. 17, 2014). Discovery under the federal rules is broad and courts liberally construe the scope of discovery. *Partner Weekly*, 2014 WL 1577486, at *2.

The Court may compel discovery pursuant to Rules 37(a)(3) and (4) of the Federal Rules of Civil Procedure, which provide:

(B) To Compel a discovery Response. A party seeking discovery may move for an order compelling an answer, designation, production or inspection . . . if: (iv) a party fails to produce documents . . . as requested under Rule 34.

See also Manley v. Zimer, No. 3: 11-CV-00636-RCJ-WGC, 2013 WL 5592328, at *6 (D. Nev. Oct. 9, 2013). A party resisting discovery bears a heavy burden to demonstrate why discovery should not be permitted. *In re GM Mirage Secs. Litig.*, No. 2:09-CV-1558-GMN-VCF, 2014 WL 6675732, at *3 (D. Nev. Nov. 25, 2014) (granting motion to compel).

Here, Defendants’ Responses to Plaintiff’s Requests for Production are incomplete and constitute a failure to respond in light of the broad discovery rules under the Federal Rules of Civil Procedure. This Court should, therefore, compel Defendants to fully respond to Plaintiffs First Set of Requests for Production, to produce any and all documents wrongfully withheld, and the Scheduling Order should be amended to allow additional time for Plaintiff to retain an expert witness.

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B. Defendants Must Be Compelled to Produce Documents Responsive to Plaintiff's Requests for Production.

By email dated January 24, 2018, Defendants' counsel confirmed that Defendants are withholding responsive documents that are within their possession, custody, and control. Smith Decl. at ¶ 12. In doing so, Defendants rely on a variety of boilerplate objections which fail to support or otherwise explain why responsive documents need not be produced. More specifically, Defendants assert that they are not required to produce documents related to any products that are not specifically identified in Plaintiff's Complaint. Defendants' objections, however, are untenable and Defendants should be compelled to produce their responsive documents.

1. Disputed Discovery Requests

The present Motion concerns Plaintiff's Requests for Production Nos. 2, 3, 4, 5, 7, 10, 11, 13, 14, 15, 16 and 18, all of which concern Plaintiff's requests for documents and information related to the design, manufacture, import, and sale of products that are identical, or nearly-identical, to Plaintiff's products.

i. Request for Production No. 2:

Produce documents sufficient to show Your complete importation and sales activities with respect to Your Accused Products, including without limitation, documents evidencing: (a) the total number of units of Your Accused Product sold; (b) the total number of units of Your Accused Products received in the United States; (c) the delivery date(s) of units of Your Accused Products, and the total number of units in each such delivery; (d) the total sales of Your Accused Products in dollar value; (e) the locations of each sale of Your Accused Products; and (f) the applicable gross and net profit margins of Your Accused Products.

Smith Decl. at **Exhibit A**, p. 17.

Defendants' Response:

Subject to Defendants' General Objections and Preliminary Statement, Defendants specifically objects to this Request on the following grounds. Defendants object to this Request as vague and ambiguous to the extent that it seeks information about "Accused Products" and the definition of "Accused Products" includes numerous products that were not identified in the Complaint, and

for which Plaintiff has not alleged trade dress rights, including BC4024, BC4023, BC4010, BC3978, BC3501, BC3953, BC3930, BC3928, BC3863, BC3844, BC3978, BC3863, BC3844, BC900-507, BC900-500, BC3776. Defendants further object to this Request as vague and ambiguous to the extent that it seeks information about “Accused Products” and the definition of “Accused Products” includes “any related products.” Defendants further object to this Request as vague, ambiguous in seeking “Your complete importation and sales activities with respect to Your Accused Products.” Defendants will respond to this Request as to those products specifically accused by Plaintiff in its Complaint. Defendants further object to this Request as being overbroad, unduly burdensome and disproportionate to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties’ relative access to relevant information, the parties’ resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit in seeking “documents sufficient to show your complete importation and sales activities with respect to Your Accused Products,” and “the locations of each sale of Your Accused Products.” Defendants further object to this Request as being overly broad and unduly burdensome in that it is not limited by date.

Id. at **Exhibit B**, pp. 5-6.

ii. Request for Production No. 3:

Produce documents sufficient to show the complete chain of distribution for you Accused Products, including without limitation, documents evidencing: (1) the manufacture, marketing, distribution, sale, and importation of Your Accused Products into the United States; (2) all shipping containers arriving from China into the United States containing Your Accused Products; (3) the entities involved in the chain of distribution, including the vendors, original equipment manufacturers, original design manufacturers, importers, carriers, distributors, wholesalers, retailers; and (4) the primary contact person at each such entity.

Id. at **Exhibit A**, p. 17.

Defendants’ Response:

Subject to Defendants' General Objections and Preliminary Statement, Defendants specifically objects to this Request on the following grounds. Defendants object to this Request as vague and ambiguous to the extent that it seeks information about "Accused

1 Products" and the definition of "Accused Products" includes
2 numerous products that were not identified in the Complaint, and
3 for which Plaintiff has not alleged trade dress rights, including
4 BC4024, BC4023, BC4010, BC3978, BC3836, BC3778, BC3501,
5 BC3953, BC3930, BC3928, CB3863, BC3844, BC3978, BC3863,
6 BC3844, BC900-507, BC900-500, BC3776. Defendants further
7 object to this Request as vague and ambiguous to the extent that it
8 seeks information "Accused Products" and the definition of
9 "Accused Products" includes "any related products." Defendants
10 will respond to this Request as to those products specifically
11 accused by Plaintiff in its Complaint.

12 Defendants further object to this Request as vague, ambiguous in
13 seeking "Your complete importation and sales activities with
14 respect to Your Accused Products." Defendants will respond to
15 this Request as to those products specifically accused by Plaintiff
16 in its Complaint. Defendants further object to this Request as being
17 overbroad, unduly burdensome and disproportionate to the needs
18 of the case, considering the importance of the issues at stake in the
19 action, the amount in controversy, the parties' relative access to
20 relevant information, the parties' resources, the importance of the
21 discovery in resolving the issues, and whether the burden or
22 expense of the proposed discovery outweighs its likely benefit in
23 seeking "the complete chain of distribution for you Accused
24 Products, including without limitation, documents evidencing: (1)
25 the manufacture, marketing, distribution, sale, and importation of
26 Your Accused Products into the United States; (2) all shipping
27 containers arriving from China into the United States containing
28 Your Accused Products; (3) the entities involved in the chain of
distribution, including the vendors, original equipment
manufacturers, original design manufacturers, importers, carriers,
distributors, wholesalers, retailers; and (4) the primary contact
person at each such entity." Defendants further object to this
Request as being overly broad and unduly burdensome in that it is
not limited by date.

Defendants further object to this Request to the extent that it calls
for information protected by the attorney-client privilege, the
attorney work-product doctrine, and/or any other applicable
privilege or immunity. To the extent that this Request seeks
confidential business information, Defendants further object on
grounds that a protective order has not been entered into in this
case.

The foregoing response is given without prejudice to Defendants'
right to produce evidence of any fact that may later be discovered,
recalled or made relevant by the proceedings in this case.

Id. at **Exhibit B**, pp. 7-8

1 **iii. Request for Production No. 4:**

2 Identify all documents and communications relating to Your
3 Accused Products being exchanged between you and any entity
4 that fabricated or otherwise contributed to the manufacture or
5 assembly of Your Accused Products, including without limitation
6 any documents related to the design, development, fabrication,
7 production, manufacture, assembly and/or testing of Your Accused
8 Products.

9 *Id.* at **Exhibit A**, pp. 17-18.

10 **Defendants' Response:**

11 Subject to Defendants' General Objections and Preliminary
12 Statement, Defendants specifically objects to this Request on the
13 following grounds. Defendants object to this Request as vague and
14 ambiguous to the extent that it seeks information about "Accused
15 Products" and the definition of "Accused Products" includes
16 numerous products that were not identified in the Complaint, and
17 for which Plaintiff has not alleged trade dress rights, including
18 BC4024, BC4023, BC4010, BC3978, BC3836, BC3778, BC3501,
19 BC3953, BC3930, BC3928, CB3863, BC3844, BC3978, BC3863,
20 BC3844, BC900-507, BC900-500, BC3776. Defendants further
21 object to this Request as vague and ambiguous to the extent that it
22 seeks information "Accused Products" and the definition of
23 "Accused Products" includes "any related products." Defendants
24 will respond to this Request as to those products specifically
25 accused by Plaintiff in its Complaint.

26 Defendants further object to this Request as vague, ambiguous in
27 seeking "Your complete importation and sales activities with
28 respect to Your Accused Products." Defendants will respond to
29 this Request as to those products specifically accused by Plaintiff
30 in its Complaint. Defendants further object to this Request as being
31 overbroad, unduly burdensome and disproportionate to the needs
32 of the case, considering the importance of the issues at stake in the
33 action, the amount in controversy, the parties' relative access to
34 relevant information, the parties' resources, the importance of the
35 discovery in resolving the issues, and whether the burden or
36 expense of the proposed discovery outweighs its likely benefit in
37 seeking 'identify all documents and communications relating to
38 Your Accused Products being exchanged between you and any
39 entity that fabricated or otherwise contributed to the manufacture
40 or assembly of Your Accused Products." Defendants further object
41 to this Request as being overly broad and unduly burdensome in
42 that it is not limited by date.

Defendants further object to this Request to the extent that it calls for information protected by the attorney-client privilege, the attorney work-product doctrine, and/or any other applicable privilege or immunity. To the extent that this Request seeks confidential business information, Defendants further object on grounds that a protective order has not been entered into in this case.

The foregoing response is given without prejudice to Defendants' right to produce evidence of any fact that may later be discovered, recalled or made relevant by the proceedings in this case.

Id. at **Exhibit B**, pp. 8-9

iv. Request for Production No. 5:

Produce documents evidencing each sale of Your Accused Products.

Id. at **Exhibit A**, p. 18.

Defendants' Response:

Subject to Defendants' General Objections and Preliminary Statement, Defendants specifically objects to this Request on the following grounds. Defendants object to this Request as vague and ambiguous to the extent that it seeks information about "Accused Products" and the definition of "Accused Products" includes numerous products that were not identified in the Complaint, and for which Plaintiff has not alleged trade dress rights, including BC4024, BC4023, BC4010, BC3978, BC3836, BC3778, BC3501, BC3953, BC3930, BC3928, CB3863, BC3844, BC3978, BC3863, BC3844, BC900-507, BC900-500, BC3776. Defendants further object to this Request as vague and ambiguous to the extent that it seeks information "Accused Products" and the definition of "Accused Products" includes "any related products." Defendants will respond to this Request as to those products specifically accused by Plaintiff in its Complaint.

Defendants further object to this Request as being overly broad and unduly burdensome in that it is not limited by date. To the extent that this Request seeks confidential business information, Defendants further object on grounds that a protective order has not been entered into in this case.

Subject to and without waiving any of the foregoing general or special objections, Defendants respond that at a mutually convenient time after entry of a protective order, they will make available for inspection responsive non-privileged documents that

1 are not subject to the attorney work product doctrine, that are
2 within the proper scope of discovery and that are within
Defendants' possession, custody, or control.

3 The foregoing response is given without prejudice to Defendants'
4 right to produce evidence of any fact that may later be discovered,
recalled or made relevant by the proceedings in this case.

5 *Id.* at **Exhibit B**, p. 10.

6
7 **v. Request for Production No. 7:**

8 Produce all contracts, communications, receipts, invoices, and
9 other documents with, between, or relating to Hyclass International
Inc., Dong Guan Real Lighting Co. Ltd, and Yi Xin Shade Factory.

10 *Id.* at **Exhibit A**, p. 18.

11 **Defendants' Response:**

12 Subject to Defendants' General Objections and Preliminary
13 Statement, Defendants specifically objects to this Request on the
following grounds.

14 Defendants further object to this Request as being overbroad,
15 unduly burdensome and disproportionate to the needs of the case,
considering the importance of the issues at stake in the action, the
16 amount in controversy, the parties' relative access to relevant
information, the parties' resources, the importance of the discovery
17 in resolving the issues, and whether the burden or expense of the
proposed discovery outweighs its likely benefit in seeking "all
18 contracts, communications, receipts, invoices, and other documents
with, between, or relating to Hyclass International Inc., Dong Guan
19 Real Lighting Co. Ltd, and Yi Xin Shade Factory" without limit to
the products accused in this case. Defendants further object to this
20 Request as being overly broad and unduly burdensome in that it is
not limited by date.

21
22 To the extent that this Request seeks confidential business
information, Defendants further object on grounds that a protective
23 order has not been entered into in this case.

24 The foregoing response is given without prejudice to Defendants'
25 right to produce evidence of any fact that may later be discovered,
recalled or made relevant by the proceedings in this case.

26 *Id.* at **Exhibit B**, pp. 11-12

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1 **vi. Request for Production No. 10:**

2 Produce all contracts, communications, receipts, invoices, and
3 other documents with, between, or relating to Dong Guan City
4 Meredith Lighting.

5 *Id.* at **Exhibit A**, p. 19.

6 **Defendants' Response:**

7 Subject to Defendants' General Objections and Preliminary
8 Statement, Defendants specifically objects to this Request on the
9 following grounds.

10 Defendants further object to this Request as being overbroad,
11 unduly burdensome and disproportionate to the needs of the case,
12 considering the importance of the issues at stake in the action, the
13 amount in controversy, the parties' relative access to relevant
14 information, the parties' resources, the importance of the discovery
15 in resolving the issues, and whether the burden or expense of the
16 proposed discovery outweighs its likely benefit in seeking "all
17 contracts, communications, receipts, invoices, and other documents
18 with, between, or relating to Dong Guan Real Lighting Co. Ltd"
19 without limit to the products accused in this case. Defendants
20 further object to this Request as being overly broad and unduly
21 burdensome in that it is not limited by date.

22 To the extent that this Request seeks confidential business
23 information, Defendants further object on grounds that a protective
24 order has not been entered into in this case.

25 The foregoing response is given without prejudice to Defendants'
26 right to produce evidence of any fact that may later be discovered,
27 recalled or made relevant by the proceedings in this case.

28 *Id.* at **Exhibit B**, p. 14.

1 **vii. Request for Production No. 11:**

2 Produce all contracts, communications, receipts, invoices, and
3 other documents with, between, or relating to Union Star
4 Collection.

5 *Id.* at **Exhibit A**, p. 19.

6 **Defendants' Response:**

7 Subject to Defendants' General Objections and Preliminary
8 Statement, Defendants specifically objects to this Request on the
9 following grounds.

1 Defendants further object to this Request as being overbroad,
2 unduly burdensome and disproportionate to the needs of the case,
3 considering the importance of the issues at stake in the action, the
4 amount in controversy, the parties' relative access to relevant
5 information, the parties' resources, the importance of the discovery
6 in resolving the issues, and whether the burden or expense of the
7 proposed discovery outweighs its likely benefit in seeking "all
8 contracts, communications, receipts, invoices, and other documents
9 with, between, or relating to Union Star Collection" without limit
10 to the products accused in this case. Defendants further object to
11 this Request as being overly broad and unduly burdensome in that
12 it is not limited by date.

8 To the extent that this Request seeks confidential business
9 information, Defendants further object on grounds that a protective
10 order has not been entered into in this case.

10 The foregoing response is given without prejudice to Defendants'
11 right to produce evidence of any fact that may later be discovered,
12 recalled or made relevant by the proceedings in this case.

12 *Id.* at **Exhibit B**, pp. 14-15.

13 **viii. Request for Production No. 13:**

14 Produce all contracts, communications, receipts, invoices, and
15 other documents with, between, or relating to Gemful Hardware
16 Machining.

16 *Id.* at **Exhibit A**, p. 19.

17 **Defendants' Response:**

18 Subject to Defendants' General Objections and Preliminary
19 Statement, Defendants specifically objects to this Request on the
20 following grounds.

20 Defendants further object to this Request as being overbroad,
21 unduly burdensome and disproportionate to the needs of the case,
22 considering the importance of the issues at stake in the action, the
23 amount in controversy, the parties' relative access to relevant
24 information, the parties' resources, the importance of the discovery
25 in resolving the issues, and whether the burden or expense of the
26 proposed discovery outweighs its likely benefit in seeking "all
27 contracts, communications, receipts, invoices, and other documents
28 with, between, or relating to Gemful Hardware Machining"
without limit to the products accused in this case. Defendants
further object to this Request as being overly broad and unduly
burdensome in that it is not limited by date.

1 To the extent that this Request seeks confidential business
2 information, Defendants further object on grounds that a protective
order has not been entered into in this case.

3 The foregoing response is given without prejudice to Defendants'
4 right to produce evidence of any fact that may later be discovered,
recalled or made relevant by the proceedings in this case.

5 *Id.* at **Exhibit B**, p. 16.

6 **ix. Request for Production No. 14:**

7 Produce all contracts, communications, receipts, invoices, and
8 other documents with, between, or relating to Archtel Co., LTD.

9 *Id.* at **Exhibit A**, p. 20.

10 **Defendants' Response:**

11 Subject to Defendants' General Objections and Preliminary
Statement, Defendants specifically objects to this Request on the
following grounds.

12 Defendants further object to this Request as being overbroad,
13 unduly burdensome and disproportionate to the needs of the case,
considering the importance of the issues at stake in the action, the
14 amount in controversy, the parties' relative access to relevant
information, the parties' resources, the importance of the discovery
15 in resolving the issues, and whether the burden or expense of the
proposed discovery outweighs its likely benefit in seeking "all
16 contracts, communications, receipts, invoices, and other documents
with, between, or relating to Archtel Co., LTD" without limit to the
17 products accused in this case. Defendants further object to this
Request as being overly broad and unduly burdensome in that it is
18 not limited by date.

19 To the extent that this Request seeks confidential business
20 information, Defendants further object on grounds that a protective
order has not been entered into in this case.

21 The foregoing response is given without prejudice to Defendants'
22 right to produce evidence of any fact that may later be discovered,
recalled or made relevant by the proceedings in this case.

23 *Id.* at **Exhibit B**, pp. 16-17

24 **x. Request for Production No. 15:**

25 Produce all documents constituting, evidencing, or relating to any
26 contract or agreement concerning the design, development, testing,
production, manufacture, distribution, importation, marketing,
27 and/or sale of Your Accused Products.

28 *Id.* at **Exhibit A**, p. 20.

Defendants' Response:

Subject to Defendants' General Objections and Preliminary Statement, Defendants specifically objects to this Request on the following grounds. Defendants object to this Request as vague and ambiguous to the extent that it seeks information about "Accused Products" and the definition of "Accused Products" includes numerous products that were not identified in the Complaint, and for which Plaintiff has not alleged trade dress rights, including BC4024, BC4023, BC4010, BC3978, BC3836, BC3778, BC3501, BC3953, BC3930, BC3928, CB3863, BC3844, BC3978, BC3863, BC3844, BC900-507, BC900-500, BC3776. Defendants further object to this Request as vague and ambiguous to the extent that it seeks information "Accused Products" and the definition of "Accused Products" includes "any related products." Defendants further object to this Request as vague, ambiguous in seeking "Your complete importation and sales activities with respect to Your Accused Products." Defendants will respond to this request as to those products specifically accused by Plaintiff in its Complaint. Defendants further object to this Request as being overbroad, unduly burdensome and disproportionate to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit in seeking all documents "relating to any contract or agreement concerning the design, development, testing, production, manufacture, distribution, importation, marketing, and/or sale of Your Accused Products." Defendants further object to this Request as being overly broad and unduly burdensome in that it is not limited by date.

Defendants further object to this Request to the extent that it calls for information protected by the attorney-client privilege, the attorney work-product doctrine, and/or any other applicable privilege or immunity. To the extent that this Request seeks confidential business information, Defendants further object on grounds that a protective order has not been entered into in this case.

Subject to and without waiving any of the foregoing general or special objections, Defendants respond that at a mutually convenient time after entry of a protective order, they will make available for inspection responsive non-privileged documents that are not subject to the attorney work product doctrine, that are within the proper scope of discovery and that are within Defendants' possession, custody, or control which show the design,

development, marketing and sale of the products specifically accused by Plaintiff in its Complaint.

The foregoing response is given without prejudice to Defendants' right to produce evidence of any fact that may later be discovered, recalled or made relevant by the proceedings in this case.

Id. at **Exhibit B**, pp. 17-18.

xi. Request for Production No. 16:

Produce all documents and communications that relate to revenue earned for or the number of sales of Your Accused Products.

Id. at **Exhibit A**, p. 20.

Defendants' Response:

Subject to Defendants' General Objections and Preliminary Statement, Defendants specifically objects to this Request on the following grounds. Defendants object to this Request as vague and ambiguous to the extent that it seeks information about "Accused Products" and the definition of "Accused Products" includes numerous products that were not identified in the Complaint, and for which Plaintiff has not alleged trade dress rights, including BC4024, BC4023, BC4010, BC3978, BC3836, BC3778, BC3501, BC3953, BC3930, BC3928, CB3863, BC3844, BC3978, BC3863, BC3844, BC900-507, BC900-500, BC3776. Defendants further object to this Request as vague and ambiguous to the extent that it seeks information "Accused Products" and the definition of "Accused Products" includes "any related products." Defendants further object to this Request as being overly broad and unduly burdensome in that it is not limited by date.

Defendants further object to this Request to the extent that it calls for information protected by the attorney-client privilege, the attorney work-product doctrine, and/or any other applicable privilege or immunity. To the extent that this Request seeks confidential business information, Defendants further object on grounds that a protective order has not been entered into in this case.

Subject to and without waiving any of the foregoing general or special objections, Defendants respond that at a mutually convenient time after entry of a protective order, they will make available for inspection responsive non-privileged documents that are not subject to the attorney work product doctrine, that are within the proper scope of discovery and that are within Defendants' possession, custody, or control from which the revenue earned for and the number of sales of the products specifically accused by Plaintiff in its Complaint may be determined.

The foregoing response is given without prejudice to Defendants' right to produce evidence of any fact that may later be discovered, recalled or made relevant by the proceedings in this case.

Id. at **Exhibit B**, p. 19.

xii. Request for Production No. 18:

Produce all documents and communications reflecting, referring to, or relating to research, development and/or design of Your Accused Products.

Id. at **Exhibit A**, p. 20.

Defendants' Response:

Subject to Defendants' General Objections and Preliminary Statement, Defendants specifically objects to this Request on the following grounds. Defendants object to this Request as vague and ambiguous to the extent that it seeks information about "Accused Products" and the definition of "Accused Products" includes numerous products that were not identified in the Complaint, and for which Plaintiff has not alleged trade dress rights, including BC4024, BC4023, BC4010, BC3978, BC3836, BC3778, BC3501, BC3953, BC3930, BC3928, CB3863, BC3844, BC3978, BC3863, BC3844, BC900-507, BC900-500, BC3776. Defendants further object to this Request as vague and ambiguous to the extent that it seeks information "Accused Products" and the definition of "Accused Products" includes "any related products." Defendants further object to this Request as vague, ambiguous in seeking "Your complete importation and sales activities with respect to Your Accused Products." Defendants will respond to this request as to those products specifically accused by Plaintiff in its Complaint. Defendants further object to this Request as being overly broad and unduly burdensome in that it is not limited by date.

Defendants further object to this Request to the extent that it calls for information protected by the attorney-client privilege, the attorney work-product doctrine, and/or any other applicable privilege or immunity. To the extent that this Request seeks confidential business information, Defendants further object on grounds that a protective order has not been entered into in this case.

Id. at **Exhibit B**, p. 21-22.

2. Defendants Must Produce Documents Evidencing the Design, Manufacture, Importation, and Sales of the Accused Products.

In Plaintiff's Requests for Production Nos. 2, 3, 4, 5, 15, 16, and 18, Plaintiff sought

1 information regarding the manufacture, importation, and sale of certain “Accused Products.”
2 Plaintiff defined “Accused Products” to specifically include twenty-five (25) of Defendants’
3 products which are identical, or nearly identical, to designs that Mr. Bruck was responsible for
4 selling while he was employed by Trend (now Plaintiff). Defendants, however, refuse to produce
5 responsive documents, resting on their objection that Plaintiff’s definition of “Accused Products”
6 is vague and ambiguous and that each requests is overly-broad and unduly burdensome.

7 First, it is nonsensical for Defendants to claim that the definition of “Accused Products”
8 is either vague or ambiguous. Plaintiff defined its term to include twenty-five specific product
9 numbers associated with Defendants’ products. Accordingly, there can be no question regarding
10 what information Plaintiff is seeking in its discovery requests and Defendants’ objection should
11 be overruled.

12 Second, despite Defendants’ objection that Plaintiff’s discovery requests are “overbroad,
13 unduly burdensome and disproportionate to the needs of the case,” Defendants failed to
14 demonstrate or otherwise explain the nature of the burden imposed by complying with Plaintiff’s
15 requests. As numerous courts have made clear, a party may not merely raise boilerplate
16 objections and refuse to produce responsive documents. Rather, the party objecting to discovery
17 must affirmatively support its objections. *See In re ATM Fee Antitrust Litig.*, 233 F.R.D. 542,
18 545 (D. Cal. 2005) (“the litany of overly burdensome, oppressive, and irrelevant does not alone
19 constitute a successful objection to a discovery request.”); *Caliper Techs. Cop. V. Molecular*
20 *Devices Corp.*, 213 F.R.D. 555, 562 (D. Cal. 2003) (“a producing party is obligated to sow, by
21 affidavits or other evidence, the specific nature of the burden imposed.”). Moreover, the
22 objecting party “***must show specifically how, despite the broad and liberal construction***
23 ***afforded the federal discovery rules, each interrogatory is not relevant or how each question is***
24 ***overly broad, burdensome or oppressive . . . by submitting affidavits or offering evidence***
25 ***revealing the nature of the burden.*” *Roesberg v. Johns-Manville Corp.*, 85 F.R.D. 292, 297 (D.**
26 ***Pa.* 1980) (emphasis added) (internal citations omitted). *See also Koninklijke Philips***
27
28

1 *Electrotronics N.V. v. KXD Technology, Inc.*, No. 2:05-cv-1532-RLH-GWF, 2007 WL 778153,
2 at *4 (D. Nev. March 21, 2007).

3 Here, Defendants failed to provide any supporting evidence regarding the nature of the
4 burden imposed by producing their responsive documents. Indeed, it is clear that no such burden
5 exists as Mr. Bruck admitted during party depositions that Defendants selectively produced
6 documents based on his subjective determination that only certain product designs were relevant.
7 *See* Smith Decl. at **Exhibit C**, pp. 264-265 (confirming that Defendants did not produce all
8 responsive documents based on Mr. Bruck's personal determination that only certain products
9 "could conceivably [be] consider[ed] to be an infringement on [Trend's] rights."). Further, by
10 email dated January 24, 2018, Defendants' counsel confirmed that, despite Defendants' assertion
11 that they would only produce documents related to the specific products identified in the
12 Complaint, Defendants produced documents evidencing orders "relating to BC4023, BC3974,
13 BC3778, BC3776 and BC3953" – products that were not included in Plaintiff's Complaint.
14 Accordingly, it is clear that producing additional responsive documents imposes no undue
15 burden upon Defendants. Smith Decl. at ¶ 12.

16 Notwithstanding the foregoing, even if the Court looks beyond Defendants' specious
17 objections, Defendants may not justifiably limit their production to documents related to the
18 products specifically accused in the Complaint. *See William Powell Co. v. Nat'l Indem. Co.*, No.
19 1:14-CV-00807, 2017 WL 1326504, at *7 (S.D. Ohio Apr. 11, 2017) (refusing to limit discovery
20 to specific asbestos claims identified in the complaint because those claims were only "a
21 representative sample of a larger set of bad faith incidents[.]"). Here, like in *William Powell Co.*,
22 the products identified in Plaintiff's Complaint are merely a representative sample of the greater
23 class of products being sold by Defendants that are substantively identical to Plaintiff's products
24 and that Mr. Bruck was responsible for selling while he was employed by Trend (now Plaintiff).
25 Further, information regarding the manufacture, importation, and sale of each such product is
26 clearly relevant to Plaintiff's claims. Specifically, the withheld documents are necessary for
27 Plaintiff to evaluate the harm caused by Defendants' wrongful conduct because they show (1)
28

1 how many knock-off products Defendants made; (2) how many entered the United States; (3)
2 how many were sold; and (4) to whom Defendants sold them.

3 Accordingly, Defendants should be compelled to produce all non-privileged documents
4 responsive to Plaintiff's Requests for Production Nos. 2, 3, 4, 5, 15, 16, and 18.

5 **3. Defendants Should Be Compelled to Produce Documents Related to**
6 **Key Manufacturers, Importers, and Customers.**

7 In Requests for Production Nos. 7, 10, 11, 13 and 14, Plaintiff seeks information
8 regarding certain key manufacturers, importers, and customers. Specifically, Plaintiff requested
9 "contracts, communications, receipts, [and] invoices" so that Plaintiff can properly identify third
10 parties responsible for bringing Defendants' products in to the United States as well as assess
11 whether and to what extent Defendants have sold their products to Plaintiff's former, current, and
12 prospective customers. Once again, however, Defendants refuse to produce responsive
13 documents, objecting to each request as "overbroad, unduly burdensome and disproportionate to
14 the needs of the case."

15 Notwithstanding the fact that Defendants refused to explain the nature of the burden
16 associated with producing their responsive documents, Plaintiff agreed to limit each request to
17 invoices and communications related to Defendants' "Accused Products" as defined in the
18 discovery requests. Again, however, Defendants refuse to produce any responsive documents
19 beyond those specifically related to the products identified in the Complaint. The withheld
20 documents will show who is responsible for making and importing Defendants' knock-off
21 products, as well as to whom the Defendants have sold them. Not only will this help Plaintiff
22 assess the overall scope of Defendants' wrongful conduct, it will confirm or refute Plaintiff's
23 allegations that Defendants have sold their knock-off products to Plaintiff's customers.

24 For the same reasons outlined above, Defendants have failed to support their objections
25 and continue to withhold documents that are relevant to Plaintiff's claims at issue in this matter.
26 Accordingly, Defendants should be compelled to produce all non-privileged documents
27 responsive to Plaintiff's Requests for Production Nos. 7, 10, 11, 13 and 14.
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C. Plaintiff Is Entitled to Recover its Attorneys' Fees Associated with this Motion.

Fed. R. Civ. P. 37(a)(5)(A)(ii) permits the Court to order payment of reasonable expenses, including attorney's fees, for a motion to compel responses to interrogatories or document production, unless "the opposing party's non-disclosure, response or objection was substantially justified." The Court may impose sanctions for discovery responses which are evasive. Fed. R. Civ. P. 37(a)(4); *see also Koninklijke Philips Electronics N.V.*, 2007 WL 778153, at *8. As is explained above, Plaintiff's counsel participated in a good faith effort to obtain the disputed discovery without court intervention. Nonetheless, Defendants have continued to stonewall and obstruct Plaintiff's effort to obtain basic, discoverable information. Such obstructionist conduct has required Plaintiff to incur the additional expense of preparing and filing this motion.

Accordingly, should the Court grant Plaintiff's Motion, Plaintiff is entitled to recover its reasonable attorneys' fees and costs incurred in preparing and filing same.

D. The Court Should Amend the Scheduling Order to Allow Plaintiff to Retain an Expert Witness and Complete Discovery Prior to the Deadline for Filing Dispositive Motions.

The Court should amend the scheduling order, allowing Plaintiff to retain an expert and to complete discovery prior to the deadline for filing dispositive motions. Courts routinely find that FRCP 16(b) gives district courts wide latitude in entering scheduling orders. *See, e.g., Slip Track Systems, Inc. v. Metal-Lite, Inc.*, 304 F.3d 1256 (Fed. Cir. 2002); *Burks v Oklahoma Publishing Co.*, 81 F.3d 975, 978 (10th Cir. 1996). Likewise, once entered, district courts have wide latitude to modify scheduling orders upon a showing of "good cause." FRCP 16(b). Courts interpret "good cause" to mean that the scope of information obtained within the bounds of the scheduling order will not allow the parties to fully litigate the claims in this case and "[s]ince the scheduling order is entered early in the litigation, this standard . . . seems appropriate[.]" *Dilmar Oil Co., Inc. v. Federated Mutual Ins. Co.*, 986 F. Supp. 959, 980 (D.S.C. 1997).

1 Here, the Court should amend the scheduling order to allow Plaintiff to retain an expert
2 witness and to file a dispositive motion following Defendants' compelled supplemental
3 responses. On November 10, 2017, the deadline for expert disclosures (ECF No. 24 at ¶ 6), the
4 parties had yet to exchange substantive discovery; instead negotiating the Stipulated Protective
5 Order and actively engaging in early settlement negotiations. Stated simply, at the time
6 proscribed for expert disclosures, Plaintiff could not have retained an expert because Defendants
7 had yet to produce any documents for an expert to review or even for Plaintiff to properly
8 evaluate the subject matter that would require expert analysis. Thus, any expert disclosure would
9 have been limited only to expert credentials and background information. *See Slaven v. Spirit*
10 *Airlines, Inc.*, No. CIV. A. 08-CV-10705, 2009 WL 3614980, at *2 (E.D. Mich. Oct. 27, 2009)
11 ("Arguably Plaintiff could have produced some of the required report information at the time of
12 disclosing the expert, such as the expert's qualifications and the list of all other cases in which
13 the expert testified, however, *it would have done little good to either party where the parties*
14 *only recently received the [discovery material] on which any report, opinion or testimony of*
15 *the expert is likely to be based.*") (emphasis added).

16 Accordingly, after receiving Defendants' supplementary document production, Plaintiff
17 should be afforded the opportunity to retain and disclose an expert witness.

18 IV. CONCLUSION

19 For the foregoing reasons, Plaintiff respectfully requests that the Court enter an Order
20 compelling Defendants to provide all non-privileged documents in their possession, custody or
21 control that are responsive to Plaintiff's Requests for Production Nos. 2, 3, 4, 5, 7, 10, 11, 13, 14,
22 15, 16 and 18 and awarding Plaintiff its reasonable attorneys' fees and costs incurred in
23 preparing and filing this Motion. Further, Plaintiff respectfully requests that the Court amend the
24 current Scheduling Order to extend discovery and to allow Plaintiff to retain and disclose an
25 expert witness.
26
27
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Respectfully Submitted,

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Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on the 2nd day of February 2018, a true and correct copy of the foregoing was filed and served via the United States District Court's ECF System, which shall send notification of such filing to all counsel of record.

/s/ Leslie N. Wolfolk

An employee at Dickinson Wright PLLC

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